

## Appendix K: Decision of an Arbitrazh Court in the First Instance

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**In the Name of the Russian Federation**

### **DECISION**

City of Samara

Case No. A55-329/99-23

12 April 1999

The Arbitrazh Court for Samara Oblast

In the composition of:

Presiding judge Evstifeeva, V.V.

And judges \_\_\_\_\_

Having considered in a court session the case concerning the suit of \_\_\_\_\_ OAO \_\_\_\_\_  
“Tokobank” in the person of its Samara branch in the city of Samara

against: ZAO “Ekvator” of the city of Samara

concerning \_\_\_\_\_ the exaction of 3570000 rubles due

With the participation in \_\_\_\_\_ from the plaintiff - head of the legal department  
the session of: T.P. Kalinkina (power of attorney dated 29/03/99), from the respondent - I.P. Pavlov (power of attorney dates 01/03/99) and A.A. Samoilov (power of attorney dated 01/03/99)

The plaintiff, taking account of the petitions of 01/03/99 and of 09/04/99, requests the exaction from the respondent of 4086250 rubles, including 3000000 rubles in debt for credit received and 1086250 rubles in debt for interest (including at an increased rate [due to late payment]) according to contract No. 32/97 of 11/04/97, with account for the additional agreement of 26/12/97.

The respondent did not admit the suit, considering that in accordance with credit contract No. 32/97 it received credit in the sum of 1000000 rubles, which was timely returned to the plaintiff, and that no credit was issued to it on the basis of the additional agreement of 26/12/97.

During the session, a break in the hearings was announced of three days.

Taking into consideration that in accordance with the credit contract of the parties No. 32/97 of 11/04/97 the plaintiff on 14/04/97 issued to the respondent 1000000000 rubles (in 1998 denomination 1000000 rubles) for a period (taking into account the additional agreement No. 4 of 15/07/97) through 15/12/97 with a 45% yearly interest rate. The rate of interest for use of the credit was changed several times by additional agreements to the contract. According to memorandum order of 25/12/97, the indebtedness for the credit in the sum of 10000000000 rubles was extinguished by the respondent.

In accordance with the corrected account of the plaintiff, on 25/12/97 the respondent remained indebted for the interest for the use of the credit in the sum of 20666 rubles, 67 kopecks. During the court session no support was found for the statement of the respondent that on 25/12/97 it was not indebted to the plaintiff for interest, since the plaintiff failed to take account of the payment orders No. 237 of 24/07/97, No. 338 of 29/09/97, No. 314 of 16/09/97, No. 377 of 28/10/97 and No. 434 of 27/11/97, for the overall sum of 37833334 rubles (in 1998 prices). In all of the listed payment orders, the purpose of the payment is listed by the respondent as payment on a loan account, and not interest for the use of a credit.

During the period of effect of the credit contract No. 32/97 of 11/04/97, two additional agreements to it were concluded by the parties, in accordance with which the plaintiff opened for the respondent a credit line in the amount of up to 3000000000 rubles with a period for payment of 25/12/98, and in additional agreement No. 14 of 26/12/97 the plaintiff obligated itself within three days of its conclusion to transfer according to the information stated by the respondent 3000000000 rubles for a period until 15/10/98 (points 2 and 3 of the agreement). At the same time, in point 1 of the additional agreement it is envisioned that the plaintiff will issue a so-called "bill of exchange credit," that is, the issuance of four simple bills of exchange [veksels] of the bank, series DB Nos. 0004764, 0004765, 0004766 and 0004767, for an overall sum of 3000000000 rubles. For the use of the credit in the additional agreement No. 14 there is envisioned a payment in the amount of 10% yearly from the date of the creation of the indebtedness until the date of payment by the bank of the bills of exchange and 31% per year from the date of the payment of the bills of exchange until 15/10/98.

In fact, monetary assets in the sum of 3000000000 rubles as a credit to the respondent were not issued by the plaintiff, in connection with which it does not have the right to claim their return from the respondent and the payment of interest for their use by the respondent on the basis of the credit contract.

In the materials of the case there is an act confirming the transfer by the plaintiff of the stated bills of exchange to the respondent, however the obligation of the respondent to the plaintiff in connection with this may not be based upon the credit contract of the parties.

Taking account of that set forth, the suit should be refused.

In connection with the expiration of the delay in payment of the state fee granted to the plaintiff, the fee is subject to exaction from [the plaintiff] into the federal budget in the amount of 32031 rubles, 25 kopecks.

Being guided by Articles 124 and 125 of the APC RF,

**THE COURT HAS DECIDED:**

The suit is refused.

There shall be exacted from OAO Stock Commercial Bank “Tokobank” of the city of Moscow into the federal budget the sum of 32031 rubles, 25 kopecks as the state [filing] fee.

An execution order shall be issued after the entry of the decision into legal force.

Judge V.V. Evstifeev [signature]